IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/02/2004

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THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 23951 of 2003 and W.P.No. 23952 of 2003
and
W.P.M.P. No. 29530 & 29532 of 2003
W.P.M.P. No. 1944 & 1954 of 2003

G. Anbalagan ... Petitioner in both
the WPs

-Vs-

1. The Tamil Nadu Civil Supplies
Corporation Ltd
rep. by its Chairman cum
Managing Director
42, Thambusamy Road
Kilpauk, Chennai - 10

2. The Tamil Nadu Civil Supplies
Corporation Ltd
rep. by its Regional Manager
Namakkal Region
Namakkal ... Respondents in
WP. 23951/2003
3. B. Ganesan

1. The Tamil Nadu Civil Supplies
Corporation Ltd
rep. by its Chairman cum
Managing Director
42, Thambusamy Road
Kilpauk, Chennai - 10

2. The Tamil Nadu Civil Supplies
Corporation Ltd
rep. by its Regional Manager
Salem Region
Salem - 636 004
... Respondents in
3. B. Ganesan WP 23952/2003

Petitions under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. S. Venkataraman in both WPs

For Respondents : Mr. V. Perumal for RR1 & 2 in both WPs

:COMMON ORDER

These writ petitions have been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent, in so far as it permits the third respondent to undertake movement work to Salem

and Namakkal Regions, quash the same and consequently direct the first and second respondents not to interfere with the movement right granted to the petitioner for Salem and Namakkal Regions.

2. By consent of counsel for both sides, the writ petition is taken up for final disposal.

3. It is the case of the petitioner that the respondents have invited tenders for transportation of rice, wheat etc., from FCI depots outside the region and to deliver at TNCSC storage points for the year 2003-2004.

3. It is seen from clause 3 (b) of the tender conditions set out in page 4 & 5 of the typed set of papers that only one contractor would be appointed for the regions Salem-Namakkal, notwithstanding that the Chairman cum Managing Director reserves the right to appoint more than one contractor for the same region for movement, depending upon the work load and the situation. It is also seen from the records that the petitioner was awarded contract on 01-07-2003 and 02-07-2003 for Salem and Namakkal regions respectively. The third respondent was also awarded the contract by an Order dated 03-07-2003 and 12-07-2003 for the said regions.

4. Now, let us look into the relevant clauses that contain in the Tender conditions:-

"Clause 32 - on each day, the number of lorries required at each storage point of FCI will be conveyed to the contractor over phone and the contractor is expected to place the required number of lorries at the specified time and place.

Clause 33 - a sum of Rs.100/- will be levied as penalty per day per lorry towards non-supply of lorries.

Clause 36 - the contractor shall attend the movement work at various places of business of the TNCSC or its customers and associates, by providing adequate

number of lorries immediately on receipt of notice or instructions from the Senior Regional Manager/Regional Manager TNCSC Limited or by the Officer authorised by the Senior Regional Manager/Regional Manager from time to time in this behalf.

Clause 37 - the Senior Regional Manager/Regional Manager or officers authorised by him shall issue work orders along with the authorisation every month and the transport contractor shall commence the movement and complete it within the time specified by the Senior Regional Manager/Regional Manager. The additional expenses incurred by the TNCSC Limited over and above the approved rates shall be recovered from the claims and security deposit of the transport Contractor.

Clause 40 - in the event of the contractor's failure to life the quantity allotted as per the FCI Release Order for which advance payment by TNCSC has been made in full within the stipulated time resulting in lapsing of the unlifted quantity in the particular release order, if any, the contractor shall be liable to make good the loss.

Clause 46 - In the event of bifurcation of region during the contract period of transport, the contractor appointed for the composite region shall be liable to act as transport contractor for the bifurcated regions also.

5. Only relevant clauses were mentioned above, though stringent clauses were also incorporated in the tender conditions against the contractors in the event of any default. The tender conditions show that the contractor shall be liable in the event of delay, failure, loss of quantity etc., Only in the event of lapses of unlifted quantity in the particular release order, it is open to the Corporation to engage another contractor.

6. Under Clause 3 (b) of the tender conditions, the Chairman cum Managing Director reserves the right of the corporation to appoint more than one contractor in the same region for movement depending upon the workload and the situation.

7. The contract awarded in favour of the third respondent by orders dated 03-07-2003 and 12-07-2003 were perused by me. No whispering about any lapses by the petitioner or any details about the so called workload and situation warrant the appointment of the third respondent. Indeed, the petitioner is willing to perform the contract and his ability is not disputed by the respondents. A person cannot be penalised for no fault of his merely resorting to equity clauses in favour of the respondent/corporation when such person is found to have not been benefited or the State deprived of the benefits (Mohd.Gazi Vs. State of Madhya Pradesh) 2004 (4) Supreme 705: AIR 2000 SC 1806. An offer is made by one person and acceptance by the person to whom such offer is made becomes an agreement under the Law of Contract enforceable as defined under Section 2 of the Contract Act and none of the parties can resile therefrom. Section 37 of Contract Act obliges a party to the contract to perform what has been actually stipulated in the contract to be performed (Bharathi Knitting Co Vs. DHL World Wide Express Courier

Division) AIR 1996 SC 2508.

8. I do not find any sufficient cause to resile from the terms by the corporation and permitting the third respondent to do the same work. In other words, nothing is disclosed in the order of appointment of the third respondent either to attract clause 3 (b) or any other clauses.

In the result, the writ petitions are allowed. NO costs. Consequently, connected WPMP and WVMPs are closed.

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Index : Yes
Internet : Yes
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